

State Water Resources Control Board

**AMENDED ORDER FOR CLEAN WATER ACT SECTION 401
WATER QUALITY CERTIFICATION FOR COUNTY OF SAN DIEGO, FLOOD
CONTROL MAINTENANCE REGIONAL GENERAL PERMIT 53 U.S. ARMY CORPS
OF ENGINEERS LOS ANGELES DISTRICT OFFICE FILE # SPL-2009-00334-MBS
STATE WATER RESOURCES CONTROL BOARD FILE # SB09016GN**

All changes to the Water Quality Certification (Certification) issued on November 17, 2010, are shown below as additions in **bold underline**, and deletions in **bold strikethrough**. This does not include minor grammatical edits.

PROJECT: County of San Diego, Flood Control Maintenance, Regional General Permit 53 **(Project)**

APPLICANT: Mr. Nelson Olivas
County of San Diego
Department of Public Works
5555 Overland Avenue, Suite 2188
San Diego, CA 92123-1295

This **amended** Certification responds to your request on behalf of the County of San Diego (County) for water quality certification for the **subject** Project. Your amended application was received on March 26, 2010. **Your request for amendment to the 2010 Certification was received on May 31, 2012, and was determined to be complete on July 2, 2012.**

ACTION:

- | | |
|---|---|
| <input type="checkbox"/> Order for Standard Certification | <input type="checkbox"/> Order for Denial of Certification |
| <input checked="" type="checkbox"/> Order for Technically Conditioned Certification | <input type="checkbox"/> Order for Waiver of Waste Discharge Requirements |

AMENDMENT:

This amendment request adds one site to the list of maintenance facilities regulated under Regional General Permit 53 (RGP 53). The County requested the

addition of two sites, Mission Trails Park (MTP-001) culvert and Oak Country II (OCII-001) culvert.

Based on the information provided by the County, the U.S. Army Corps of Engineers (Corps) and the State Water Resources Control Board (State Water Board) determined that the proposed work at MTP-001 would not involve a discharge of dredge and fill material. Activities as described at the MTP-001 site will not be regulated under section 401 of the Clean Water Act. Any changes in the proposed activities must be submitted for review prior to implementation. This site is not included in the Drainage Channel Inventory, attachment D-2.

Activities at the second site, OCII-001, are added to those covered by RGP 53 and are included in attachment D-2. The Project activities at this site involve the removal of sediment and debris from inside the culvert using a water trailer (water buffalo) staged from the existing ranch road. Sediment and debris will be removed on either side of the culvert using shovels. The total impact area is 20-feet by 10-feet (200 square feet). Removal of vegetation is not proposed at this site. The complete list of facilities is available in Attachment D-2.

In addition, the County has removed 26 facilities from the list of maintenance facilities regulated under RGP 53. The sites are shown in Table D-2, Attachment D.

AUTHORIZATION:

This Certification authorizes approximately ~~4082~~ **1077** project sites for activities undertaken in accordance with RGP 53 issued by the Corps for the County Flood Control Maintenance Program (FCMP). The FCMP is for routine flood maintenance activities on bridges, culverts, and channels involving the clearing of debris, sediment and vegetation. All activities shall be in accordance with the terms and conditions set forth by the Corps Permit number SPL-2009-00334-MBS and this Water Quality Certification. A complete inventory of sites is found in Attachment D.

STANDARD CONDITIONS:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and article 6 (commencing with section 3867) of chapter 28, title 23 of the California Code of Regulations.
2. This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, title 23 of the California Code of Regulations, and the application

specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. This Certification is conditioned upon total payment of any fee required under chapter 28, title 23 of the California Code of Regulations and owed by the applicant.

ADDITIONAL CONDITIONS:

1. **Application:** This Certification does not apply to the placement of new culverts or channel liners in any water body, unless the Project has been approved in writing by the 401 Program Manager of the appropriate Regional Water Quality Control Board [Regional Water Board(s)].
2. **Endangered Species:** FCMP projects covered under this Order shall not result in taking of any endangered, threatened or candidate species or the habitat of such species except as authorized pursuant to the State and Federal Endangered Species Acts. The United States Fish and Wildlife Service issued a Biological Opinion on July 22, 1998 for FCMP projects. The mandatory terms and conditions for "incidental take" shall be strictly adhered to.
3. **Other State Permits:** FCMP projects covered under this Order shall comply with all applicable National Pollutant Discharge Elimination System permits and Waste Discharge Requirements.
4. **Toxic Substances:** FCMP projects covered under this Order shall not discharge substances in concentrations toxic to human, plant, animal or aquatic life or that produce detrimental physiological responses.
5. **Hazardous Substances:** FCMP projects covered under this Order shall not discharge waste classified as "hazardous" as defined in title 22 California Code of Regulations, section 66261 and California Water Code section 13173.
6. **Compliance with other Federal and State Permits and Conditions:** This Certification does not obviate the need to obtain other permits that may be required by federal, state and local authorities.
7. **Emergency Situations: This Certification does not cover emergency situations for repair and protection activities. An emergency is where there is a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services.**
8. **Best Management Practices (BMPs):**

- a. FCMP projects must be the minimum necessary to alleviate flooding potential in the immediate vicinity and shall not exceed the limits specified for each site in the attached tables (refer to attachment D).
- b. Appropriate BMPs shall be implemented throughout the project activities to help minimize and avoid impairment of water quality. Boundaries of each work site shall be clearly marked with flagging. All BMP materials shall be onsite prior to project activity and ready for use. BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such management practices.
- c. FCMP projects in wetlands shall utilize mats to avoid and minimize impacts to soils and hydrology.
- d. Any excavated material shall be disposed of at an approved suitable upland location.
- e. No equipment or materials shall be stored, staged, or fueled in waters of the State, including wetlands.
- f. The discharge of petroleum products or other pollutants to surface waters that may result in violation of water quality standards is prohibited. Activities shall not cause visible oil, grease, or foam in the work area or downstream.
- g. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall be outside of waters of the state and shall not result in a discharge or a threatened discharge to waters of the state.
- h. All work areas shall be effectively isolated from stream flows using suitable control measures before commencement of any in-water work. The diverted stream flow shall not be contaminated by construction activities.
- i. Structures for isolating the in-water work area and/or diverting the stream flow (e.g., coffer dam, geo-textile silt curtain) shall not be removed until all disturbed areas are cleaned and stabilized.
- j. In the event of rain, the disturbed in-water work area shall be temporarily stabilized before stream flow exceeds the capacity of the diversion structure. The disturbed in-water work area shall be stabilized to prevent contact with the stream flow.
- k. All areas disturbed by project activities shall be protected from washout and erosion.
- l. When a project is completed, any excess material or debris shall be removed from the work area and disposed of properly.

9. Mitigation:

- a. The County shall submit to the Corps and the State Water Board for review and approval, a revised habitat mitigation and monitoring plan for the Sweetwater Offsite Mitigation Area (SWOMA). The revised mitigation and monitoring plan shall address and/or provide the following:
 - i. define and provide a measure to quantitatively define the term "minimal wetland vegetation,"
 - ii. define and provide a measure to quantitatively define the term "high frequency maintenance,"
 - iii. a method to quantitatively assess success of the mitigation site, and mitigation success criteria,
 - iv. a detailed discussion regarding SWOMA's past performance based on success criteria,
 - v. a long term management plan including list of ongoing maintenance and monitoring of the SWOMA,
 - vi. a list of all sites on a spreadsheet with columns specifying the date maintenance occurred for the first time and any subsequent maintenance dates, the impacts at each site, the date of the mitigation for the impacts at each site, the ongoing balance of credits available at SWOMA and the latitude and longitude at each site.
- b. Temporary impacts defined as impacts after the initial, first time maintenance activity, shall be mitigated for by exotic species removal, such as *Arundo donax* or other invasive species at a ratio of 1:1.
 - i. Methodology and success of eradication shall be documented with an Adaptive Management approach for future assessment, design, implementation, and evaluation of control measures.
- c. The County shall provide a list of facilities, including location and habitat types, six months prior to first time maintenance. The State Water Board, in consultation with Regional Water Boards, the Corps, the California Department of Fish and Game (CDFG) and the County will establish appropriate mitigation ratios. Mitigation requirements shall be based upon:
 - i. Quality of existing habitat, including consideration of the temporal losses;
 - ii. Frequency of disturbance; and
 - iii. Mitigation for permanent impacts for first time maintenance will be determined on a case by case basis during the interim period prior to State Water Board and Corps approval of a new Mitigation and Monitoring Plan. The following is a list of the minimum mitigation ratios per habitat type for first time maintenance:

- (1) Freshwater Marsh – 2:1 ratio
- (2) Southern Willow Scrub - 2:1 ratio
- (3) Mulefat Scrub - 2:1 ratio
- (4) Riparian Woodland – 3:1 ratio
- (5) Disturbed Wetland – 1:1 ratio
- (6) Out of Watershed Mitigation – 3:1 ratio

10. Reports:

- a. Monitoring Reports: the County shall provide to the State Water Board and appropriate Regional Water Board staff copies of an annual monitoring reports by June 1 of each year documenting the following monitoring activities:
 - i. Pre-and Post-maintenance site photos with date stamp and a consistent reference location for all sites with first time maintenance activities requiring mitigation;
 - ii. Post-project monitoring photos are to be taken immediately after the activity is completed to ensure that projects details are completed as designed and documented accurately; and
 - iii. In addition to the reporting elements specified by RGP 53, the Annual Reports shall include:
 - (1) a list of all sites on a spreadsheet with columns specifying the date maintenance occurred for the first time and any subsequent maintenance dates;
 - (2) the impacts at each site and date of the mitigation for the impacts at each site and the date for all maintenance activities for each site;
 - (3) the ongoing balance of credits available at SWOMA; and
 - (4) the latitude and longitude of each site.
- b. The pre-discharge Notifications and Annual Reports required by RGP 53 are to be sent to the State Water Board and the Regional Water Boards at the following addresses:

State Water Resources Control Board
Division of Water Quality
1001 I Street, 15th Floor
Sacramento, CA 95814

Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

11. Violations:

- a. The County or its contractor and subcontractors shall verbally, by telephone, or by e-mail report any non-compliance to the 401 Program Manager of the appropriate Regional Water Board where the project is located within 24 hours from the time when the County or its contractor and subcontractors become aware of the circumstances.
- b. The County or its contractor and subcontractors shall report in writing to the State Water Board and the appropriate Regional Water Board all violations of any terms or conditions of this Certification within two consecutive days (48 hours) from the time the County becomes aware of the violation. The written report shall contain:
 - i. A description of the violation and its cause;
 - ii. The period of the violation event, including dates and times, photos of the site, and if the violation has not been corrected, the anticipated time the violation is expected to continue; and
 - iii. Steps taken or planned to reduce, eliminate, and prevent recurrence of the violation.
- c. In the event of any violation or threatened violation of the conditions of this Certification, the violation shall be subject to any remedies, penalties, processes, or sanctions as provided for under State law. For purposes of the Clean Water Act (CWA) section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification Order.
- d. In response to a suspected violation of any condition of this Certification Order, the State Water Board may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
- e. In response to any violation of the conditions of this Certification Order, the State Water Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.

ADMINISTRATIVE CONDITIONS:

1. The State Water Board reserves the right to suspend, cancel, or modify and reissue this Certification, after providing notice to County and/or responsible contractor/sub-

contractor, if the State Water Board determines that the project fails to comply with any of the terms or conditions of this Certification.

2. A copy of this Certification, the application, and supporting documentation must be available at the project site during construction for review by site personnel and agencies. All personnel performing work on the proposed project shall be familiar with the content of this Certification and its posted location on the project site.
3. The County shall grant State Water Board and Regional Water Board staff, or an authorized representative, upon presentation of credentials and other documents as may be required by law, permission to enter the project site at reasonable times, to ensure compliance with the terms and conditions of this Certification and/or to determine the impacts the project may have on waters of the state.
4. **All changes to the list of facilities proposed for maintenance are subject to State Water Board staff approval. Minor changes in design, additions, and/or deletions of facilities shall be submitted to State Water Board staff for review. Implementation of modification(s) shall not occur until receipt of written staff determination.**
5. This Order will remain in effect until October 30, 2015; or until RGP 53 is retracted, whichever occurs first.

STATE WATER BOARD CONTACT PERSON:

If you have any questions, please contact State Water Board Environmental Scientist Catherine Woody at (916) 341-5785 (CWoody@waterboards.ca.gov) or by mail at:

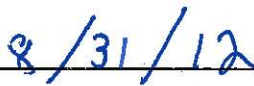
State Water Resources Control Board
Division of Water Quality
Certification & Wetland Program
1001 I Street, 15th Floor
Sacramento, CA 95814

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that as long as all of the conditions listed in this Certification action are met, any discharge from the referenced project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards). This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ, which authorizes this Certification to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Project Information Sheet (Attachment B and C), and (b) compliance with all applicable requirements of statewide water quality control plans and policies, the Regional Water Boards Water Quality Control Plans and the 2010 FCMP Mitigated Negative Declaration dated April 13, 2009.


Thomas Howard
Executive Director


Date

- Attachments (6):
- A. Signatory Requirements
 - B. Project Information Sheet
 - C. Project Information Supplement
 - D. Table D-1, RGP 53 Maintenance Sites
Table D-2, RGP 53 Drainage Channel Inventory
 - E. CEQA Findings